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In the

Supreme Court of the United States

October Term, 1960

No. 200

TRAYTON L. LATHROP,

Appellant

v.

JOSEPH D. DONOHUE,

Appellee.

On Appeal from the Supreme Court of Wisconsin

JOINT BRIEF OF KENTUCKY STATE BAR ASSOCIATION AND VIRGINIA STATE BAR, AMICI CURIAE

[illegible] STALLINGS, President
[illegible] State Bar Association
[illegible] Kentucky Home Life Bldg.
[illegible]ville, Kentucky

[illegible] SLEDD
[illegible] Security Trust Building
[illegible]ington, Kentucky

Counsel for Kentucky State Bar Association

WILLIAM H. KING, President
Virginia State Bar
915 Mutual Building
Richmond, Virginia

EDWARD R. BAIRD
1119 Bank of Commerce Bldg.
Norfolk, Virginia

Counsel for Virginia State Bar

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INTEREST OF AMICI CURIAE

The Kentucky State Bar Association and Virginia State Bar join in presenting this brief *amici curiae*. Like the State Bar of Wisconsin, they have a common interest in sustaining the validity of the organized bar in the 26 states of the Union. They are opposed to the position of the Appellant in this cause; and wish to impress upon the Court the importance of the matter in controversy, not only to lawyers of Kentucky and of Virginia, but to the public at large.

This brief, tendered with the consent of both the Appel-

lant and the Appellee, is presented in two basic parts; the first concerning the bar of Kentucky, and the second that of Virginia.

KENTUCKY STATE BAR ASSOCIATION

1.

Kentucky State Bar Association Was Integrated by a Legislative Enactment in 1934, and the Highest Appellate Court in the Commonwealth of Kentucky Has Consistently Held That Integration Comes within the Inherent Power of the Court.

Chapter 30 of the Kentucky Revised Statutes deals with attorneys at law. The integrated bar provision is KRS 30.170, "Court Rules Governing Practice of Law and State Bar." The Act provides:

> "The Court of Appeals shall adopt and promulgate rules:
>
> (a) Defining the practice of law;
>
> (b) Prescribing a code of ethics governing the professional conduct of attorneys and the practice of law;
>
> (c) Establishing practice and procedure for disciplining, suspending and disbarring attorneys;
>
> (d) Organizing and governing a Bar Association of the attorneys of the state to act as an administrative agency of the Court of Appeals for the purpose of enforcing such rules as are adopted and promulgated by the court under this section; providing for the government of the State Bar as a part of the judicial department of the state government, and for such divisions thereof as the Court of Appeals determines; requiring all persons practicing law in this state to be members in

good standing of the State Bar; and fixing the form of its organization and operation;

(e) Fixing fees upon recommendation of the board of Bar Commissioners, not to exceed ten dollars, to be paid for the purpose of administering this section and the rules adopted and promulgated under it, and for the collection and disbursement of such fees."

An unsuccessful attack was made on the constitutionality of this statute in 1946 in the case of *Hobson* v. *Kentucky Trust Company of Louisville* (1946), 303 Ky. 493, 197 S. W. 2d 454, on the grounds that it violated Section 27 of the Kentucky Constitution which divides the state government into three departments, executive, legislative and judicial, and on the further ground that it violated Section 28 of the Constitution, which provided that no one department can exercise the power belonging to one of the other departments. The Court of Appeals, the highest appellate court of the Commonwealth of Kentucky, in deciding the validity of these charges made a statement which is high precedent to the recognition of the validity of the integrated bars.

"The attack is grounded upon the contention that the Legislature in the enactment of our Integrated Bar Act attempted to confer upon the Court of Appeals legislative authority in conflict with Section 28 supra of our constitution. In effect, the attack denies the universally accepted doctrine that the making of rules of practice in courts, as well as out of courts, in matters pertaining to the rights of individuals under the law, is inherently possessed by courts and judges in carrying out the functions of administering the law affecting the rights of persons as between each other and as between them and the government. Such authority is

> universally accepted by the courts as properly embraced within the Judicial Department of the government."

In this opinion, it can be seen that the Kentucky Court of Appeals is acutely aware of its power, regarding the integrated bar, both by statute and by the court's inherent right to make such rules as are necessary to properly govern court procedures and the State Bar Association.

Although no attack has been made in the Commonwealth of Kentucky upon the court's right to impose and determine the amount of bar dues to be paid by each attorney licensed to practice in the Commonwealth, the court's decisions indicate that it would adopt and follow the decision of the Supreme Court of Florida in Petition of Florida State Bar Association (1949) 40 Southern 2d 902. In that case the Florida Court determined that it had the power to require the payment of membership fees as an incident to its power to integrate.

> "If the judiciary has inherent power to regulate the bar, it follows that as an incident to regulation, it may impose a membership fee for that purpose. It would not be possible to put on an integrated bar program without means to defray the expense. We think the doctrine of implied powers necessarily carries with it the power to impose such an exaction."

Here then is a judicial recognition of the obvious fact that it takes money to properly implement the key purposes of an integrated bar, that is the proper administration of justice, adequate standards for admission and continuance of practice by the individual attorney, and the court's obligation to prevent the unauthorized practice of the law.

The integrated bar case is well settled in Kentucky and we would direct the court's attention to the decision in the

case of *Louisville Bar Association* v. *Clark* (1937), 270 Ky. 315, 109 S. W. 2d 619. This was one of the earliest attacks on the validity of the integrated bar act in Kentucky, and the court pointed out the other cases in which it had decided that the integrated bar act was valid:

> "These matters (one of which was the validity of the Act creating state-wide bar association) have been determined by this court in the trial of previous similar cases and decided adversely to respondent's contentions and we need not further discuss those cases. A reference to these cases is sufficient. See Commonwealth, ex rel Ward vs Herrington, 266 Ky. 41, 98 S. W. 2d 53; Commonwealth, ex rel Buckingham et al v. Ward, 267 Ky. 627, 103 S. W. 2d 117; in re Sparks, 267 Ky. 93, 101 S. W. 2d 194."

That the court has the inherent power to require compulsory membership in the association and payment of fees to continue as a member, was clearly stated by the Court in a decision rendered just one year after the effective date of the Integrated Bar Act. *Talbott* v. *Park* (1934), 256 Ky. 534, 76 S. W. 2d 600.

> "Whether or not the Court of Appeals has the inherent power to adopt rules for the organization and regulation of the State Bar is immaterial since if it does not possess that power, the Legislature has clothed it with the requisite power by the act in question."

2.

The Required Membership Fees of the Kentucky State Bar Association Are Used for the Benefit of the Legal Profession and the General Public.

In order to acquaint the court with the specific rules in

Kentucky relating to membership and fees of the Kentucky State Bar Association, we direct attention to certain provisions of the Rules of the Court of Appeals.

> "RCA 3.030 — Members of the bar required to be members of the association. All persons licensed to practice law in this State shall be, and they are, members of the Association."

A reading of these rules demonstrates that although each attorney is compelled to be a member of the State Bar Association, adequate provisions are made for those who are not financially able to pay their dues and those who are intentionally delinquent are given ample opportunity to make a defense. However, the rules are firm in providing that those who do not have a meritorious defense to the payment of dues shall not continue to practice law in Kentucky and their name shall be stricken from the rolls.

In the case of *Dredidel* v. *City of Louisville* (1937), 268 Ky. 659, 105 S. W. 2d 807, the Court of Appeals held:

> "It's (the integrated bar act) only purpose was to prescribe a code of ethics governing the profession and conduct of attorneys in the practice of law, and for the further purpose of establishing a procedure for disciplining, suspending and disbarring attorneys at law, and providing for the organization and operation of a bar association, and prescribing a fee to be paid, not to the state or to the treasurer of the state, but to a select officer of the Bar Association, to be used solely for paying expenses in administering the purposes of the Association. . . . The fee of $2.00 (now $10.00) to be collected, and when collected, under the act, is used entirely to meet the expenses of administering the act, and rules and regulations to be prescribed, adopted and promulgated under the act."

This statement outlines the need for, and the justification in charging membership fees. In order to carry out the purposes of the Bar Association, there must be sufficient funds available.

The Board of Bar Commissioners for the Kentucky State Bar Association, the association's governing body, whose fourteen members are elected by the members of the association, are charged with being the administrative agency of the Kentucky Court of Appeals in carrying out the purposes of the Act. The Board's effectiveness can, of course, be greatly restricted by the shortage of funds. Disciplinary cases require investigations and records can only be prepared by calling on stenographers and court reporters. This, of course, requires money.

3.

A License to Practice Law in Kentucky Is a Privilege Dependent Upon a Condition Precedent of Becoming a Member of the State Bar Association and a Condition Subsequent of Upholding the Association's Standards.

The appellant in this case, in his brief, page 29, contends that "There is no place in the constitutional system of the United States for the idea that any occupation, calling, or profession, is a mere privilege in the absolute control of those temporarily holding the reins of government."

The Kentucky Court of Appeals would not sustain this contention. In the case of *Commonwealth, ex rel Ward* v. *Herrington* (1936), 266 Ky. 41, 98 S. W. 2d 53, at page 56, the Court declared:

> "Their (lawyers) positions as such are not held by inherent right. They are entitled to become such only when they possess prescribed educational and moral

> qualifications. The law maintains that they should continue thereafter to maintain them, and especially must they preserve their moral qualifications. If impairment thereto, or total loss thereof, is permitted to occur, then the judicial or governmental machine becomes impaired and ineffective to that extent and a condition is created when its maintainer should, in the exercise of his power and authority—as well as his duty—make the necessary corrections."

And in the case of *In Re: Taylor* (1949), 309 Ky. 388, 217 S. W. 2d 954, it was stated:

> "A license to practice law in this Commonwealth can be granted in no other way than by the authority of this court. This license, a personal privilege, is burdened with pre-existing as well as subsequent conditions calculated to uphold and maintain the dignity of the court, the ethics of the profession and the welfare of all concerned with the administration of justice."

Even prior to the Integrated Bar Act, the Kentucky courts have held that the right to practice was a personal privilege. *Commonwealth* v. *Richie* (1902), 114 Ky. 366, 70 S. W. 1054:

> "An attorney is an officer of the court, created by the court, and is always subject to the rule requiring honesty and good demeanor toward the court in which he practices his profession."

The fact that in order to acquire this privilege one must become a member of the State Bar Association and thereby subject himself to the courts' and the association's rules of discipline, has long been accepted by the attorneys in the Commonwealth of Kentucky.

To exercise this personal privilege, members of the State Bar Association must initially possess the educational and moral qualifications to be admitted a member of the Bar and to continue to exercise this personal privilege they must continue to maintain the ethical and moral standards and pay the annual bar dues required.

4.

The Effectiveness of the Integrated Bar Surpasses That of a Voluntary Bar and Therefore May Be More Expensive

The appellant, on page 15 of his brief, contends that "power of an integrated bar is ordinarily no greater than of a voluntary group." The appellant obviously makes this assertion to support his contention that there is no real necessity for an integrated bar and that integration, therefore, is an improper imposition upon the individual attorney.

Relative effectiveness of the two groups should not have any real bearing on the constitutional question, but since the contention is made, we would like to point out the erroneous assumption, that is the basis for this assertion. One of the primary examples of the effectiveness of the integrated bar over that of a voluntary bar is the continuing battle being fought against unauthorized practice of law. Where the voluntary local bar association is weak, the unauthorized practitioner finds the public an easy prey.

This illustration was succinctly stated by the Supreme Court of Arizona in its opinion in the case of *In Re: Lewkowitz* (1950), 70 Ariz. 325, 220 P. 2d 229, when it made reference to the period prior to the creation of the integrated bar in Arizona in 1933, the same year of Kentucky's integrated bar act.

"The voluntary state bar organizations in existence

> proved to be impotent to carry on the high purposes and noble aspirations of the legal profession for the simple reason that they were composed only of a small minority of those eligible to its membership. This weakness was readily apparent to the leaders in the legal profession and a program was initiated shortly after the turn of the century to secure the adoption of the principle of a unified bar as a means of correcting the ills existing within the profession. It was a long, hard battle that involved educating both the laity and the individualy lawyer to the necessity for a virile state bar, one that could speak authoritatively, as Charles Evans Hughes expressed it with a 'commanding voice.' "

This pronouncement exemplifies the need for an integrated bar with sufficient resources to combat those who would usurp the practice of law. It is obvious that litigation of this type is expensive, despite the unreimbursed time and labor donated by the attorneys in waging the campaign. This, alone, would be justification for the imposition of compulsory bar dues, but there is another factor that merits consideration by the court.

Local voluntary associations, understandably, can be reluctant to prosecute disciplinary cases against one of their own or to curb the unauthorized practice in their areas when it involves, personal, financial or political friends or connections. The impact of local pressure is no deterrent on the integrated bar acting as the administrative agency of the highest court in the jurisdiction.

It is vitally important to point out that the money and labor are not expended for the sole benefit of the members of the bar, but, on the contrary, for the benefit of the general public. This was ably expressed by the Nebraska Supreme Court in the case of *Neklaus* v. *Abel Construction*

Company (1957), 164 Neb. 842, 83 N. W. 2d 904, a tax case involving the unauthorized practice of law by a layman:

> "This action is taken for the benefit of the lawyers who are duly admitted to the practice of law in this state. As was said by the Supreme Court of Colorado in Bennie v. Triangle Rand Co., 73 Colo. 586, 216 P. 718, it is for the protection of citizens and litigants in the administration of justice, against the mistakes of the ignorant on the one hand and the machinations of unscrupulous persons on the other. . . ."

A similar statement can be found in the case of *Washington State Bar Association* v. *Washington Association of Realtors* (1942), 41 Wash. 2d 697, 251 P. 2d 619, where the court declared that it had a duty to protect the public by a proper decree, from the activities of those who, because of lack of professional skill, might cause injury, whether they be members of the bar or persons never qualified for or admitted to the bar. To the same effect is the case of *Pioneer Title and Insurance Company* v. *State Bar of Nevada* (1958), 74 Nev. 186, 326 P. 2d 408, where the court pointed out that the practice of law by others than the members of the State Bar of Nevada was forbidden by statute, NRS 7.600, and that the reason for this statutory provision was not the protection of the lawyer against lay competition, but the protection of the public. It should be noted that these comments are from the state courts in the states of Washington and Nevada, both of which recognize the validity of the integrated bar. Perhaps the courts in these jurisdictions would not have been called upon to incorporate these statements in opinions, had it not been for active integrated bars which were willing to prosecute these actions in an effort to protect the general public.

5.

The Constitutionality of the Integrated Bar Is Beyond Challenge

The appellant, on page 15 of his brief, makes some mention of the failure of the attempt to create an integrated bar act in the state of New York. Certainly the question of membership fees was not in issue. The opposition in New York, as seen by the Hon. Charles Evans Hughes, sprang from two fears. One was that the plan would not work on the grounds that "you cannot overcome the inertia of a great number of lawyers who do not feel their responsibility. . . . You can't legislate into lawyers a sense of their duty. You can't compel them to recognize standards by making them members of a state bar organization."

The second fear that he expressed was, "On the part of the local associations that the less respectable element of the bar, whom they considered unfit for equal participation, would gain control of an inclusive organization." 26 American Political Science Review, 470, 475-476 (1932). These fears, as expressed by the Hon. Charles Evans Hughes, have never materialized in the Commonwealth of Kentucky.

While authorities often differ on any one issue, with equal vigor, we submit that this situation does not exist with regard to the constitutional validity of the integrated bar. We submit that the weight of authority upholding the integrated bar surpasses the contentions of the appellant. We share the view expressed by William Wicker in his article "Integrated Bars", appearing at 21 Tenn. Law Review 708 (1951):

> "Bar integration acts create a relatively new type of organization. Whenever any kind of legislative act creates a new type of organization, there will be law-

yers who will raise the cry of unconstitutionality. Bar integration acts have been no exception. In a number of reported cases able lawyers have contended that the must-be-a-member and the must-pay-dues provisions of integration statutes are unconstitutional. Generally this contention has been based on claims that such a statute is an unconstitutional delegation of authority or that it denies the equal protection of the law or that it is invalid under some other constitutional provision. In all of these cases, the courts upheld the constitutional validity of the bar integration act. Other court controversies have centered around the validity of grants of power to bar associations in regard to the discipline of their members and it has been contended that such a grant of power to a bar association is an invalid delegation of judicial power. This contention has been held repeatedly to be invalid where the final decision to disbar or not to disbar is left to the court; any finding by the bar association being only recommendatory."

During the October term of 1952, in the case of *Re: Disbarment of Abraham J. Isserman* (1953), 345 U. S. 286, 97 L. Ed. 1013, 73 S. Ct. 676, this Court said:

"There is no vested right in an individual to practice law. Rather there is a right in the Court to protect itself and, hence, society, as an instrument of justice. That to the individual disbarred there is a loss of status is incidental to the purpose of the court and cannot deter the court from its duty to strike from its rolls one who has engaged in conduct inconsistent with the standard expected of officers of the Court."

While the order of disbarment was set aside two years later, this court, nevertheless, is on record as holding that the practice of law is only a personal privilege.

No integrated bar case raising the question of the validity and dues provision has previously been presented to this Court. However, this Court has, in a measure, ruled on one of the issues raised by the appellant, that of compulsory membership and dues, specifically in the field of labor organizations. In the case of *Railway Employees Department* v. *Hanson* (1956), 351 U. S. 225, 100 L. Ed. 1112, 76 S. Ct. 714, the Court met an argument that a union shop agreement with the necessary association violated the right of association, by holding that no constitutional rights had been jeopardized and specifically referred to the integrated bar in the Court's opinion, on page 238, where this language is found:

> "On the present record, there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar."

VIRGINIA STATE BAR

There are upwards of 5,300 attorneys at law in the Commonwealth of Virginia. All are members of the Virginia State Bar. More than half are members of The Virginia State Bar Association, a voluntary membership corporation chartered in 1890. Hence Virginia is one of three states in the Union having two bar organizations on the state level. Additionally, there are approximately 60 membership organizations of the bar on the local level, existing in various cities and counties.

The Virginia State Bar is a creature of the Supreme Court of Appeals of Virginia. It is described by the Legislature "as an administrative agency of the Supreme Court of Appeals of Virginia for the purpose of investigating and reporting the violation of such rules and regulations as are adopted by the Supreme Court of Appeals under this act to a court of competent jurisdiction for such proceeding as may be necessary, and requiring all persons practicing law in this state to be members thereof in good standing." (See 1940 Acts of the General Assembly of Virginia, page 502.) The quoted language is taken from the permissive legislation adopted by the General Assembly in 1938 which authorized the Supreme Court of Appeals to "prescribe, adopt, promulgate and amend rules and regulations * * * (d) Organizing and governing an association to be known as the Virginia State Bar composed of the attorneys at law of this state, * * * (e) Fixing a schedule of fees to be paid by members of the Virginia State Bar for the purpose of administering this act, and providing for the collection and disbursement of such fees; provided, however, that the annual fees to be paid by any attorney at law shall not exceed the sum of Five Dollars ($5.00)." (The maximum or ceiling on dues has since been increased by amendment of the statute to

$10.00.) The Act goes on to stipulate that "all fees collected from the members of the Virginia State Bar, as provided in Section 1 of this Act, shall be paid into the State treasury immediately upon collection and credited to the State Bar Fund. All moneys so paid into the said fund are hereby appropriated to the Virginia State Bar for the purpose of administering the provisions of this act. All disbursements from the said fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by such officer or officers of the Virginia State Bar as may be authorized, by or in accordance with rules and regulations prescribed, adopted and promulgated by the Supreme Court of Appeals of Virginia so to do." A further provision goes on to prohibit the use of dues towards publishing decisions of the Supreme Court of Appeals of Virginia, or to law magazines or to buying any such publications.

Section 1 of this legislation shows its purpose, at a glance. The General Assembly thereby authorized, and the Supreme Court of Appeals accordingly adopted, a

1. Definition of the practice of law
2. Code of professional ethics
3. Code of judicial ethics
4. System of procedure for disciplining, suspending and disbarring attorneys at law.
5. Organization of the whole bar of the State into the Virginia State Bar and requiring every practitioner to be a member.
6. Schedule of membership "fees," with provision for collection and disbursement thereof.

On October 21, 1938 the Supreme Court of Appeals of Virginia adopted and promulgated the "Rules for the Integration of the Virginia State Bar," which are reprinted in 194 Va. cxliii et seq. The Rules provide that the powers of the Virginia State Bar shall be exercised by a Council composed of 40 members in addition to the President, President-Elect and Immediate Past President, as *ex officio*, each member being elected for a term of three years by the members of the Bar in each of the 34 Judicial Circuits in Virginia, plus 6 members appointed by the Supreme Court of Appeals from the active members of the Bar of the State at large. Rule 9, Part IV, explicitly authorizes Council—

(a) To adopt By-Laws for the Council not in conflict with these rules which shall be effective when approved by the Supreme Court of Appeals.

(b) To recommend to the Virginia State Bar such By-Laws for its government and such amendments of and additions to these rules for submission to the Supreme Court of Appeals as the Bar may see fit.

(c) To elect the officers provided for by these rules.

(d) To fill vacancies in the Council for unexpired terms if there should be a failure for sixty days to elect as provided in Section (6) and to fill vacancies in any office for unexpired terms.

(e) To appoint Committees and prescribe their duties.

(f) To employ such assistants as it deems necessary and to fix their duties and compensation and the compensation of the Secretary-Treasurer.

(g) To make allocations of funds within the amounts available.

(h) To conduct such investigations and make such re-

ports as may be directed by the Supreme Court of Appeals or by the Bar.

(i) To render advisory opinions as provided in Section (10).

(j) To investigate and approve or disapprove publications in the nature of Law Lists as a medium of professional listing by the members of the Virginia State Bar.

(k) The Council may, at its discretion or upon a written request of the majority of the members of the Virginia State Bar or pursuant to a resolution duly adopted at a regular or called meeting, exercise the necessary powers:

To cultivate and advance the science of jurisprudence;

To promote reform in the law and in judicial procedure;

To facilitate the administration of justice;

To uphold and elevate the standards of honor, of integrity and of courtesy in the legal profession;

To encourage higher and better education for membership in the profession;

To promote a spirit of cordiality and brotherhood among the members of the Virginia State Bar; and

To perform all duties imposed by law.

The Rules further provide for an Executive Committee of the Council consisting of 9 members, 6 of whom are elected annually and the other 3 of whom are, *ex officio,* the President, President-Elect and Immediate Past President. Among other specific duties the Executive Committee is authorized "generally between meetings of the Council to perform such other duties and functions as are prescribed for the Council in the Rules of Court, except such functions and duties as the Council may reserve to itself or may delegate to other

Committees." A system of 10 District Committees is also established, each comprised of 7 lawyers elected by (but not from) the Council in each Congressional District in Virginia. The primary function of District Committees is to investigate unprofessional conduct and, upon probable cause shown, to file a verified complaint against the practitioner. Upon the filing of such complaint a three-judge court is appointed to try the case, pursuant to Virginia statute. District Committees also have the responsibility of investigating unauthorized practice of the law, and in this connection may petition a proper court to enjoin such misconduct. As an example of the Bar's pursuit of real estate brokers drawing of deeds, see *Comm.* v. *Jones & Robins, Inc.* (1947), 186 Va. 30, 41 S. E. 2d 270. District Committees are further empowered to act in instances of judicial misconduct, under the Rules.

The Rules go on to establish 3 standing committees of the State Bar: the Committee on Legal Ethics, Committee on Unauthorized Practice of the Law, and Committee on Judicial Ethics. Various other special committees have since been established, including the following:

On Cooperation with the Virginia State Bar Association

On Legal Aid and Legal Reference

On Virginia Bar News

On Cooperation with Judicial Council and Conference

On Insurance and Bonds and Clients' Security Fund

On Legal Services to the Armed Forces

On Cooperation with Law Schools

On Cooperation with Foreign Bar Organizations

On Traffic Courts

On Cooperation with Medical Profession

On Commonwealth, City and Town Attorneys

On Professional Prestige

On Bar Headquarters

Additionally, 4 joint committees with The Virginia State Bar Association have been appointed, their membership being limited to members of the Association:

Joint Committee on Public Information

Joint Committee on Legislation and Law Reform

Joint Committee on Continuing Legal Education

Joint Committee on Cooperation with Bar Organizations

The Committee on Continuing Legal Education is noteworthy because, for the first time last year, it was expanded to a membership of 9, of whom 5 are practicing attorneys and 4 are representatives of each of the 4 approved law schools in Virginia. The Virginia State Bar Association and the Virginia State Bar each appropriated $6,250 a year for this Committee, and the Committee in turn has employed a salaried executive director to administer a planned program of continuing legal education across the State. Cooperation with and coordination among the local bar associations in Virginia is an important phase of this Committee's activity. The various seminars and institutes, which are just beginning, will undoubtedly prove popular; registration fees from lawyers in attendance will, it is hoped, make the program self-sustaining in a few years.

All of the Virginia State Bar's various committee reports are to be found in printed pamphlets issued annually, the

last being designated "Twenty-first Annual Report of the Virginia State Bar" for the year ending June 30, 1959. In that volume the report of the Committee on Cooperation with Foreign Bar Organizations is of especial interest because it outlines the "Preliminary Arrangements for the Commemoration of the Advent of Common Law to Jamestown in 1607." The commemoration exercise was held on Jamestown Island on the day after the Virginia State Bar's annual meeting in 1959. It was a significant professional occasion, for which the Bar and its Committee received various awards and certificates of merit, including those from the Valley Forge Freedom Foundation and from the American Bar Association.

The same volume also contains an interesting report of the Joint Committee on Legislation and Law Reform. That report first referred to five subjects which the General Assembly had requested the Virginia State Bar Association and the Virginia State Bar to study. It also discussed several other topics of interest to lawyers, such as certain changes in the divorce statutes, the statutes involving the accounts of personal representatives, and other laws pertaining to wills and administration. Earlier reports of the Joint Committee on Legislation and Law Reform show concentration on topics of the same prosaic professional concern. There has been no lobbying by the organized bar in Virginia; indeed, on this account no representative of the Virginia State Bar has ever registered as a lobbyist, as required by statute. No two people think alike, of course, either in Virginia or Wisconsin. But, it might be asked, could a more apt, more propitious subject than "law reform" be devolved upon any group of people other than lawyers as a profession.

Monthly publication of the Virginia Bar News by the

Virginia State Bar, which is mailed to each member, is indeed a significant and popular activity. Under the editorship of a professor of law at the University of Virginia, the Bar News reports on matters of organized professional activity on the national level, the state level in Virginia, and the local level. The last issue carried, for instance, an article written by a member of the State Corporation Commission of Virginia which dealt with the completion of annual report forms by corporations. Advertising in the Bar News is strictly limited. Nevertheless, special mailing privileges are available, and the net cost of the publication could be measured in pennies to the individual practitioner.

The foregoing outline of the State Bar's activities is intended to explain, not just why the Bar was "integrated" in Virginia but the necessity for its existence in the minds of lawyers and laymen alike. Much could be said of the Councils determination to employ salaried counsel for the Bar, once funds are available, to assist in prosecuting kindred professional infractions across the State; as also to suppress unauthorized practice of the law in matters pertaining to estate planning, taxation, collection agencies, and other fields that are divided jurisdictionally by 10 separate District Committees. The Virginia State Bar Association was and is powerless to act in such matters. The rapidly growing complexity of the practice of law rendered such "membership" organizations obsolete; indeed, it gave birth to the organized Bar. The very existence of the Joint Committee on Continuing Legal Education is a monument to the need—to the reason for the origin of the Virginia State Bar. When its revenues are sufficient for its expenses, the occasion for joint sponsorship, or joint appropriations, from both the Committee's parent organizations will cease. In its organizational stage, however, the Committee requires more funds

than the $10 dues of the Virginia State Bar will allow.

Let us next consider the Virginia State Bar in the background of decided cases in Virginia which recognize the need for its existence and further its expressed aims.

In *Comm. and Va. State Bar* v. *Jones & Robins, Inc., supra,* the Supreme Court of Appeals of Virginia in 1947 made a number of interesting rulings and observations on the "integrated" Bar. For instance:

> "The Virginia State Bar is an organization fully authorized to institute suits and other proceedings it deems necessary to enforce the rules and regulations of the integrated bar. * * *
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> "* * * In the former case (Richmond Association of Credit Men v. Bar Assn., 167 Va. 327, 189 S. E. 153) Mr. Justice Eggleston, speaking for the Court at page 335, declared 'that the courts have the inherent power, apart from statute, to inquire into the conduct of any person—whether an individual, a law agency, or a corporation—to determine whether he or it is usurping the functions of an officer of court and illegally engaging in the practice of law and to put an end to such unauthorized practice where found to exist.'
>
> "* * * To eliminate these difficulties and afford a greater measure of protection to the public a demand arose to place the responsibility of preparing deeds upon lawyers who by proper training and experience are in better position to perform this important duty. In response to that demand this court was called upon to define the practice of law. This it did, after great and comprehensive effort and intelligent assistance from the leading members of the bar of the State. In formulating the present definition this court possessed a clear and express intent to so define the practice of law as to prevent real estate agents from continuing the practice of writing deeds.

"The Supreme Court of Appeals of Virginia, pursuant to its inherent power and chapter 410 of the Acts of 1938 (Acts 1938, p. 771), adopted rules and regulations, defining the practice of law and prescribing a code of ethics governing professional conduct of attorneys, a code of judicial ethics and other measures, by which the Bar of this State became integrated.

"These rules and regulations were drawn and recommended for adoption by forty able and experienced attorneys, designated as the 'Committee on the Integration of the Virginia State Bar,' and composed of one attorney from each of the then thirty-four judicial circuits, elected by the attorneys practicing in that circuit, and six members from the State at large, appointed by this court. At the first meeting of this committee, held in Lynchburg on June 30, 1938, the responsibility for drafting the rules and regulations to integrate the Bar was divided among five committees of eight members each."

One of the five committees was designated Committee No. 5 and named the Committee on Constitutionality of Plan of Integration and Fees. It was under the chairmanship of a lawyer who was then a member of the Senate of Virginia, later became Governor, and who thereafter attained national prominence. A portion of the Committee's report reads as follows:

"This sub-committee is of the opinion that the inherent power of the judiciary is such as to give to the Supreme Court of Appeals the right and power to integrate the Bar of the State without legislative sanction. Abundant and respectable authority upholds this view.

"However, quite independently of the inherent power of the Court we are of the opinion that the Bar Integration Bill of 1938 is a constitutional enactment and that the plan submitted to the Committee of Forty in

Lynchburg is a valid exercise of the powers conferred upon the Supreme Court of Appeals by the General Assembly with the possible exception of the method originally proposed for handling the funds of the Bar, as to which there is enough doubt to advise or recommend the amendments above stated. In making the recommendation that the rules be amended to provide for deposit of the funds in the State Treasury we have been influenced by an opinion from the Attorney-General of Virginia given under date of July 23rd, which we file with this report, to the effect that in his opinion the Bar Integration Act 'does appropriate the proceeds from the collection of said dues and that same should be paid out on warrants of the State Comptroller drawn upon the State Treasury. . . .'"

The Supreme Court of Appeals in 1952 ruled that the practice of law in Virginia was a privilege and courtesy reserved to persons duly qualified and authorized; in other words, in Virginia a person must "establish his right to exercise the privilege granted him * * *." In *Horne* v. *Bridwell*, 193 Va. 381, 385, 68 S. E. 2d 535, it is said:

"* * * These were conditions precedent to his exercise of the privilege and courtesy accorded him by Virginia law. Those conditions were not matters of empty form. They were of the spirit of the rules adopted to guide the Virginia lawyer in his relation to his client, as thus expressed.

" 'The gravity of the consequences to society resulting from abuses of this relation demands that those assuming to advise or to represent others shall be properly trained and educated, and be subject to a peculiar discipline. That fact, and the necessity for protection of society in its affairs and in the ordered proceedings of its tribunals, have developed the principles which serve to define the practice of law.' (Rules for the Integration of the Virginia State Bar, 174 Va. xviii)"

In 1942 the Supreme Court of Appeals affirmed the suspension of a practitioner's license in *Campbell* v. *Third Dist. Comm.*, 179 Va. 244, 18 S. E. 2d 883. In doing so the court specifically ruled that "the right to practice law is not an inherent right, and even before a man or woman is granted a license it must appear that he or she is a person of high moral character." Constitutional challenge of the statute was likewise denied. Two concurring judges (who were later successive Chief Justices) felt revocation, rather than suspension, proper, adding the opinion that the court had inherent power to enter a final judgment to that effect.

The issue before the Supreme Court of the United States in the instant case is moot in Virginia. This year, when the General Assembly enacted Section 54.50-1 of the Code of Virginia, it became statutory that any licensed attorney at law who fails for two successive years to pay his annual dues forfeits his license to practice. The Code section is qualified by a provision for reinstatement, with penalty. By and large, however, the General Assembly and the Supreme Court of Appeals are in unison in (1) requiring every practitioner to belong to the Virginia State Bar, (2) requiring every member to pay annual dues, and (3) providing for expulsion upon two successive defaults in payment of dues. If there is any question over the validity of the statute setting a maximum or ceiling on dues in Virginia, the opinion has been expressed that it can only be ineffectual because of the Supreme Court of Appeals' inherent power to integrate or regulate the bar without permission or restriction of the General Assembly.

SUMMARY STATEMENT

As has been shown, in both Kentucky and Virginia integration of the bar has brought great benefit not only to the legal profession, but also to the general public. In each instance there has been made possible a necessary and more rigorous enforcement of ethical standards and a greater means of curtailing the activities of unauthorized practitioners.

Experience has shown that these, and other attending gains, could not have been realized had the two bars remained unintegrated. *Were compulsory membership in organized State bars to be held invalid, the resulting damage to the profession and to the public would be severe and clearly without remedy.*

It is submitted that this Court uphold the validity of the integration of the bar of Wisconsin.

Respectfully,

KENTUCKY STATE BAR ASSOCIATION and
VIRGINIA STATE BAR, *Amici Curiae*

SAMUEL J. STALLINGS, President
Kentucky State Bar Association
638 Kentucky Home Life Bldg.
Louisville, Kentucky

HERBERT D. SLEDD
601 Security Trust Building
Lexington, Kentucky

Counsel for Kentucky State Bar Association

WILLIAM H. KING, President
Virginia State Bar
915 Mutual Building
Richmond, Virginia

EDWARD R. BAIRD
1119 Bank of Commerce Bldg.
Norfolk, Virginia

Counsel for Virginia State Bar

December 19, 1960

CERTIFICATE OF SERVICE

I, William H. King, one of counsel for *Amici Curiae* and a member of the Bar of the Supreme Court of the United States, do certify that consent for the filing of this brief has been given, and that I have served upon counsel of record for the appellant and appellee copies of this brief by depositing such copies in the United States Mail on December 19, 1960, with first class postage prepaid, and duly addressed.

WILLIAM H. KING
Of Counsel for *Amici Curiae*